

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

VISALIA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012120888

ORDER GRANTING REQUEST FOR
CONTINUANCE, SETTING
MEDIATION, PREHEARING
CONFERENCE AND HEARING AND
VACATING ORDER TO SHOW
CAUSE

On December 28, 2012, attorney Daniel A. Osher, on behalf of the Visalia Unified School District (District) filed a request for a due process hearing (complaint) with the Office of Administrative Hearings (OAH) against Student.

On January 3, 2013, Mr. Osher, on behalf the District, filed a request to continue the dates in this matter based upon scheduling conflicts Mr. Osher had with the mediation and hearing dates in OAH's January 2, 2013 scheduling order, and the additional grounds that he had not been able to contact Student's parent to arrange mutually agreeable dates. On January 8, 2013, Mr. Osher withdrew the District's continuance request as he reached Parent and they were discussing mutually agreeable dates and he would be shortly submitting a joint request for a continuance.

On January 11, 2013, Mr. Osher filed the District's Prehearing Conference (PHC) statement, which did not include information required by OAH. Instead, the District's PHC statement stated that Mr. Osher and Parent had not been able to agree on mutually agreeable dates because Parent was on vacation, but expected that Mr. Osher and Parent would agree upon dates before the PHC, scheduled for 10:00 a.m., on January 16, 2013. Student did not submit a PHC statement.

Administrative Law Judge Peter Paul Castillo vacated the PHC and issued an order to show cause (OSC) based on the District's failure to submit a proper PHC statement and not informing OAH until 30 minutes before the scheduled PHC that Student's parent was deaf and required telephonic assistance to participate in the PHC. At 11:10 a.m., on January 16, 2013, the District submitted a continuance request based on Mr. Osher's conversation with Parent the day before the scheduled PHC with mutually agreeable dates.

The OSC required the District to submit a proper PHC statement and an explanation why OAH should not dismiss the District's complaint. The District submitted its response on January 16, 2013, which further requested a continuance.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Granted. All dates are vacated. The District established good cause for the request despite the lateness of the request. This matter will be set as follows:

Mediation:	February 14, 2013, at 9:30 AM
Prehearing Conference:	February 25, 2013, at 10:00 AM
Due Process Hearing:	March 6, 2013, at 9:30 AM, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

The telephonic order to show cause hearing scheduled for at 10:00 a.m., on January 18, 2013, is vacated.

IT IS SO ORDERED.

Dated: January 17, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings